

Q U E R I E S,

Relative to feveral

DEFECTS and GRIEVANCES

In some of the présent

L A W S of I R E L A N D,

And the Proceedings thereon,

Most humbly offered

To the Consideration of the Gentlemen of
the Profession, now in Parliament.

As uselefs Laws debilitate fuch as are neceffary, fo thofe,
which may be eafily eluded, waken the Legislation. Every
Law ought to have it's Effect, and no one fhould be
fuffered to deviate from it by a particular Convention,

Montifquieu's Spirit of the Laws, Vol. II. Page 302.

The Third EDITION.

With fome Alterations and additional Queries.

By Mr. HOWARD, Author of the Treatifes of the
Law and Equity Sides of the *Exchequer*.

D U B L I N :

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QUESTIONS
DEBATES
IN PARLIAMENT
LAWSON

And the proceedings thereon,
To the consideration of the Government of
the Parliament now in Parliament.

It is hereby declared that it is the duty of the
Government to consider the petition of the
people of the United Kingdom, and to report thereon
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Q U E R I E S,

Relative to the feveral

DEFECTS and GRIEVANCES

In some of the present L A W S of
I R E L A N D, and the Proceed-
ings thereon, &c.

IS not the securing of Property, and an easy
Method of recovering it, when taken or with-
held from us, a most sure Means of promoting
Industry, Trade and Commerce; and if so, and
that there be any Defects, Delays, or Grievan-
ces in either of these, ought they not, without Loss
of Time, be remedied and redressed?

If the borrowing of Money, and the giving Se-
curities for the re-payment of it, be unavoidable,
nay absolutely necessary in a trading Nation, ought
the Debtor to have it in his Power, by any after
Act of his so to embarrass the Security he has
given, and to Distress the fair Creditor, that unless
the Debt be very considerable, he had better fore-
go it for ever, than seek it with the Delay, Ex-
pence, Loss of Time and Vexation, which, (as
the Law and Practice now stand) may attend his
endeavouring to recover it?

And

And may not this be the Case, even where a Man seized in Fee-Simple absolute of a large Estate, borrows a Sum of Money? May he not immediately afterwards by Marriage Settlement, or even by his Will, make so thorough a Change in the State and Condition of the Pledge, from what it was at the Time it was given, that should the fair Creditor be under a Necessity of foreclosing the Mortgage, he shall have a Parcel of new Rights, and new Estates to combat with?

And must he not in Consequence thereof, introduce a Cloud of new created Parties in his Bill, of whom he could not have dreamed, at the Time he lent his Money, Trustees, Infants, Priviledged, &c. some of them perhaps in different Kingdoms; and some of them, it may be, only for Conformity, (as it is called) a Term, to the Idea of which, it is as difficult to fix any Bounds, as to Infinity itself: And this, altho' his Security was duly registered, and thereby publick Notice given thereof?

And if the Creditor has no other Fund to live on but the Interest of the Principal Money he lent, in what Condition must he be, to wade through all these grievous Difficulties?

And after all, and that a Decree to a Sale has been obtained, as there is no Law for vesting the legal Estate in the Purchaser, should any of the Parties in whom it is, be obstinate and refuse to join in the Conveyance, may it not so happen as to render the whole Proceedings but of little avail?

And in all Cases, where a Mortgagee is compelled to foreclose, ought not the Mortgagor to pay every

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every Six-pence of the Cost, which the Mortgagee hath necessarily expended in the Prosecution of the Suit? * And by getting only the taxed Cost, may he not, and especially if the Suit has been of any Continuance, be a great Loser, instead of getting any Profit by having lent his Money thus?

Is not the safely realizing, or well securing of acquired Property, an Encouragement (as hath been before mentioned) to Industry and Trade? And are they not also, an Advantage to the State in which they are, and most certain Pledges for it's Security in Time of Danger, let the Property belong to whom it will, but especially, if to it's Enemies?

And as Judgments are the common Security of the Kingdom, should not every possible Means be devised to keep them clear of any Difficulties, and to make the Money due thereon, most easily come at, transferable and negotiable? and is not the contrary of this, (as the Law now stands) too much the Case? For Instance,

If the Judgment has been entered a Year and a Day, must it not be revived by a *Scire Facias*, upon a Presumption that the Debt may have been paid? Is not the Penalty given by the Statute 7 *Ann.* c. 7. against over marking Executions, a sufficient Security against issuing Execution for what is not due, if not, suppose an Affidavit of the
Sum

* Suppose a Covenant, for this Purpose, was to be in every Mortgage Deed.

Sum due, was to be produced, with the Certificate thereof.

And if the Defendant is minded to avoid for a Time, the Payment of the Debt, may he not plead to the *Scire Facias*, and thereby harrafs the Plaintiff, for several Terms, with most grievous Cost and Trouble? Suppose then, if the Law as to this Method of reviving Judgments is to continue as it is, that no Plea be received to the *Scire Facias*, but upon an Affidavit, that all the Debt is paid.

If the Cognisor of the Judgment dies, although he was at the Time of the Judgment, or at his death seized of Lands in Fee Simple, yet do not the many Difficulties and Expences, which in this Case attend the reviving of the Judgment, against the *Heir and Ter-tenants*, make it often better to forego the Debt for ever, than by this Proceeding to sue for it? For Instance,

If the Cognisor had Estates in several different Counties, is not a *Scire Facias* to issue to each? And if there shall be five Hundred *Ter-tenants*, must they not all be served, and if any be omitted, may it not be pleaded, and shall it not suspend the Writ? And upon a further, or new *Scire Facias* to the *Ter-tenant* not served, may he not also plead another *Ter-tenant* not served, and so *ad Infinitum*, if Deaths, or Changes happen? And may not every *Ter-tenant*, if there are five Hundred, plead seperately? *

And

* So that the larger the Security is, the worse it may be for the unfortunate Creditor.

And if there should happen to be any Freehold-Leases which were made antecedent to the Judgment, may not *Non Seizin* in the Cognisor be pleaded, and if the Fact be so, would it not be an absolute *Bar* to the Writ.

Then, should not *Elegits* upon these Judgments reach the whole Estate, as Custodiams do; and should not the Creditor, at the first Instance, get as effectual a Possession on an Elegit, as on an Injunction on a Custodiam, to prevent the grievous Delay, and heavy Expence of a second Possession on an Ejectment, (as is the present Course) so that, to go through the whole, unless the Debt be a considerable one, it were better the Creditor never sought the Recovery of it?

And why should these Custodiams, especially on Mesne Process, where the Debt is not ascertained, or perhaps (were the Demand to be canvassed) not a Six-pence of it due, and where the *Crown* is not really concerned; yet, under that *Fiction* take Place of a Prior Judgment Creditor, as may be the Case, at any Time before the Judgment is made an actual Lien, on the Lands by the Inquisition on the Elegit. *

And

* Did our good and gracious King, but know even half the Distresses, Hardships, and Grievances, that his Subjects in this Kingdom labour under, from these Outlawries, being in his Name, and under the Fiction of his Prerogative, when, neither His Majesty, or His Prerogative are any more really concerned therein, than one of the Nabobs of the Indies, it would grieve his honest Heart; Fair Purchasers, Mortgagees, Judgment Creditors, Annuitants, Jointure and Dower Widows, without the least Notice, (for almost all the Proceedings on this Process are clandestine, and in the Dark) stript of their Securities

And lastly, should not the Warrants of Attorney, on which these Judgments are entred, be filed at the Time they are entered? And why should not these Warrants of Attorney, be authenticated by the Oath of one of the Witnesses, as well as the Warrant of Attorney, to acknowledge Satisfaction on a Judgment? Is there not as much Danger, and might not as ill Consequences attend a Forgery, or there not being a proper Power, or Authority, in the one Case, as in the other? And to prevent any Inconveniencies from Delay, should not the Officers of the respective Courts, or their Deputies, be impowered to take these Affidavits?

Is there any just Reason, why simple Contract Debts should not be recovered of a real Fee Simple Estate, of which the Debtor died seized?

By an Act made in the fifth Year of His late Majesty, for the Relief of Creditors, in Suits with Executors or Administrators, on prosecuting an Execution *de bonis testatoris* to a *Devastavit*, though the Plaintiff obtains a Verdict, yet there is no
Cost

ries, put to great Expence, and laid under almost insuperable Difficulties to recover their Rights, and withal, the poor Tenants of the Lands, harrassed among them to absolute beggary, throughout the whole Kingdom. To relate the whole of the Mischiefs of this Process would fill a Volume, and they are encreasing every Day. It is true, that were the Law, relating to this Process to be altered, it would injure several Gentlemen. Officers of the Court, who have paid, and perhaps largely, for their Employments; which would be hard, but is not the Public well able to make them (as it should be, since Employments are permitted to be bought and sold) ample Recompence. In short, if something be not done, this Kingdom, in a few Years more, will be ruined, by this most mischievous Process.

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Cost given him; and if the Executors, &c. controvert the Matter strongly, it may happen that the Costs, on this Occasion, shall exceed the original Demand; pray should not this Act be amended?

Upon all Judgments in all Actions on the Case, as the Law now stands, no Interest is allowed, from the Time the Judgment is obtained nor any post Costs. Now, if there cannot be any Reason assigned, why the Plaintiff is not as well intitled to Interest and post Cost upon this, as upon any Judgment in an Action of Debt, ought it not to be so?

So, on every *Fieri Facias*, and other Executions, against the Goods of a Debtor, when a Part of the Money is levied, and a Return made by the Sheriff, *that the same remains in his Hands for want of Buyers*, and that a *venditioni exponas* issues, for Sale of the said Goods, and an Execution for the Remainder, no Interest can be charged on the remaining Sum, unlevied on the first Execution, and ought this to be so?

And should any Member, of either House have Priviledge, except for their Persons, in any Proceedings at Law, on Judgments, or in Equity on Mortgages? And by its being so, is not Money often refused to Men of the largest Fortunes, and of the best Characters, who have been either Lords, or Commoners?

Ought not some more speedy and less expensive Method, than an Ejectment be contrived, for getting Possessions of small Holdings, when the Te-

nant doth not pay, or holds over, after his Term is expired, against the Will of his Landlord; when by such Means he may put his Landlord to as much Expence as the Value of the Inheritance? Suppose the Justices at the Quarter-Sessions, were to be impowered to hear and determine these Matters, but under some certain small Value?

And in all Cases of Ejectments, as well upon the Title, as upon Non-payment of Rent? Should there be a Necessity of serving any Tenants, but such as have subsisting Estates, or Interests in the Lands? And should not the posting up two or three Copies of the Ejectment, Summons and Notice in some Town, or some notorious Place on the Lands, supply the Service of such Tenants?

If the saving for Infants, in the Statutes, relating to Ejectments for Non-payment of Rent, extends to Infants out of Possession, as well as to Infants in Possession (as it is apprehended it does) may it not in many Cases render ineffectual, and entirely frustrate the whole Intent and Meaning of these Acts, and especially where Family Settlements are made of Leases for Lives, with several Remainders in them, be they either for valuable Consideration, or voluntary Deeds? And ought not this to be explained and settled?

If Cattle be distrained for Trespas, or Damage *feasant*, let the Demand for Damages be ever so exorbitant, the Owner of the Cattle has no Remedy but by Replevin, so that, he had better perhaps by far, at once, pay the Demand — And to stand a Suit thereon, in one of the Law-Courts, might cost him more, than the Value of the Dis-

trefs,

trefs, altho' the Number of Cattle taken, were ten of any Kind. Would it not be very fit, that such trifling Matters as these should be finally determinable by a neighbouring Justice of the Peace?

Are not Injunctions to stop Proceedings at Law, in many Cases, the greatest Grievance to fair Creditors? Are they not generally calculated much for Vexation and Delay? And do they not frequently cause the absolute Loss of honest Demands? Why then should they issue, in any Case, without an Affidavit, verifying the material Allegations in the Bill?

If the Time in which Writs of Error may now be brought (which is twenty Years, or if there be any Incapacity in the Case, as Infancy, &c. perhaps thirty or forty Years after a Person has had a Verdict of twelve Honest Men, and been near that Time in Possession) is it not terrible, even to think on, and this perhaps for some trivial Mistake, in the Proceedings, and when all the Witnesses who appeared on the Trial, are rotten in their Graves?

Should it not be a fundamental Maxim in all States and Constitutions, that next to impartial Justice in the Determination of Property, dispatch in the Execution deservedly, ought to have the Preference?

Should then a Plainriff after a full Trial of the Cause has been had, be allowed to Non-suit himself, and thereby, (after the grievous Trouble and Expence he has already caused to the Defendant) have Liberty to bring the Issue to Trial again,

and have an Opportunity, by wicked Subornation, to supply Defect of Evidence; and when perhaps the Defendant's most material Witnesses have been by Death, or otherwise removed?

But if this Evil cannot be avoided, ought not some Method be contrived for preserving and perpetuating the Evidence which was given on the Trial? And ought not the Plaintiff be first obliged to pay every Six-pence of the Cost which the Defendant shall make appear by Affidavit he had expended thereon?

Is not the Time allowed for bringing real Actions, by far too great a Latitude? And would it not be better if it were prescribed to the Term for bringing an Ejectment? Or would it not be better, if all the various and intricate Writs which are given in real or Possessory-Actions, were abolished and reduced to that of Ejectment; (which is a practical and easy Proceeding) and that by it alone, all Lands and Hereditaments, Church-Livings and Dower shall be recovered; and that the Damages for with-holding Dower be given by the Jury equal to the Mesne Profits received?

Would it not be much for the easy and speedy Advancement of Justice, if Portions and Legacies, where charged upon *personal Assets*, were not confined to be sued for either in a Court of *Equity* or the *Spiritual* Court; or if charged upon *Lands and Hereditaments* alone, then to the Courts of *Equity* (according to the present established Regulation) but that they might in either Case be recovered by Action at Law.

Might

Might not some easy, certain Method be contrived by Deed registered, or otherwise, to enable Tenants in Tail to become Masters of their Estates, without depriving the Crown, or any of the Officers of the Courts of their antient Fees and Dues, instead of the most difficult, uncertain, fictitious, round-about Method now practiced, full of monkish Jargon, Balderdash and ridiculous Forms, for any Defect in which these common Assurances are liable to be called in Question many Years after, to the Prejudice or perhaps utter Ruin of the fair Creditor, or Purchaser?

If all special Pleadings were to be suppressed, and the general Issue only to be pleaded with Liberty, to give the special Matter in Evidence, in all Kind of Actions whatsoever, (as the Law now is on *Ejectments*) would it not prevent and save a deal of the grievous Expence and Delay which constantly attend these Boils and Blotches of the Law, scarcely ever relative to the real Merits of the Cause, and in the general, founded only in Injustice, Mischief, Litigiousness and Oppression?

And in all Cases, where there are several Acts of Parliament relating to the same Subject, ought they not to be reduced into one Law, that a Man may from the Course of Nature hope to live long enough to know the half of them? And if three Parts in four of the Report-Books of adjudged Cases, and of Law Abridgements were burned, would it not be of great Advantage to the Profession, and to Mankind in general?

Should

Should not some Method be contrived to put a Stop to the many long and tedious Motions which too often happen in Causes, created generally, by the few contentious Practitioners in the Courts, about little Errors, Neglects, or Slips, in Matters of Form, or in Points of Practice? And on these Motions, should the whole Merits of the Cause be stated, where they are not really in Question, (as is too often the Case) to the immense Expence of the most unhappy Suitors, and the employing whole Terms to no Purpose?

And in all Cases, where such Motions shall appear to have been caused by the Practitioners only, suppose that the Person in whom such a litigious terrible Spirit appears, should not only be censured, but compelled forthwith, to deposite in Court, such a Sum, as would answer all the Cost expended by the opposite Party, and at the same Time, the Court to order him at his Peril not to charge his Client with any Costs on that Account?

Is not the immoderate Length of modern Affidavits another great Inconvenience, and should they not be referred for Prolixity and Impertinence, as well as Pleadings; and the Cost to fall on the Draftsmen?

As by Stat. 7. *Will. 3. c. 25.* Special Bail is not to be given for any Sum under ten Pounds, (except as in the said Act is excepted) why then should the Body of the Defendant be arrested or imprisoned, upon any *Process*, (except as aforesaid) for any Debt under that Sum?

And

And would it not be much better, if instead thereof, a Copy of the Writ, with a Copy also of the Declaration, should be served personally upon the Defendant, or left at his last usual Place of Abode; and upon his not appearing in four Days after the Day of the Return of the Process, the Plaintiff upon an Affidavit made and filed of such Service, to be at Liberty to enter a common Appearance for the Defendant, and if no Plea be filed, before the usual Time for Pleading in ordinary Cases is expired, then the Plaintiff to file the general Issue for the Defendant, post Notice of Trial in the publick Office, as usual, on the Non-attendance of the Defendant's Attorney, make up the Record, and proceed to Trial; and after Verdict given, to proceed to Execution, as in other Cases is usual? *

And suppose the like Proceedings were to be upon the Common-Law *Subpœna*, upon such Neglect of Appearance, instead of carrying on *Process of Contempt* against the Defendant, to a *Serjeant at Arms*, at great Expence to the Plaintiff, on which, perhaps the Defendant may never be taken, or if he be, it may never be of the least Benefit to the Plaintiff?

As the Delays and Expence of Suits are so prodigious grown, that it is much better to give up a small Sum for ever, than seek the Recovery of it in any of the superior Courts; if therefore the Civil

* See the Statutes 12 Geo. 1. ch. 29, and 1st Geo. 2. ch. 27, to prevent Arrests on any Writs, out of any superiour Court, for any Sum under ten Pounds; which seem to be well worth the Consideration of the Legislature here.

vil Bill Act for the City of *Dublin*, be in any Respect defective, or not so properly framed as to Answer the salutary End, for which it was intended, and that it wants any Alteration, Addition, or Amendment, ought any Time to be lost in having it properly settled? But if it's not being more used than it is at present, be owing to the Contrivance of the lower Class of Attornies, of the several Courts, to whom this summary, cheap Proceeding, is by no Means friendly, is it not greatly in the Power of the Judges, to Remedy this most grievous Abuse, by the Discountenance they have at all Times in their Power to shew, to such evil Practitioners? *

If Courts of Conscience were erected in all the Borough-Towns in *Ireland*, for the Recovery of very small Debts, within the Liberties thereof, as in *Dublin*, and sensible honest Men the Judges thereof, with the like Perquisites, would it not be of singular Advantage to the Poor Inhabitants therein? And altho' it might greatly Prejudice the little Corporation Courts, would it not be so much the better? Is there any Thing of greater Mischief to these poor People, than these same Courts, with the horrid, petty-fogging Race that attend them?

Is

* In a late Piece, entitled, *a Vindication of Natural Society*, the Author speaking of the Abuses in our Laws, says thus, " where often the contending Parties feel themselves more effectually ruined by the Delay, than they could have been by any Decision; when our Inheritance are become a Prize for Disputation, and Disputes and Litigation are become an Inheritance, "

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Is not an honest skilful Attorney a necessary and useful Member of Society? Is he not often intrusted with the Defence of the three most valuable of Temporal Things, our Properties, our Lives, our Liberties? And is it not often in his Power to injure them all, nay, by betraying absolutely to destroy them?

Is it not then well worth the Consideration of the Judges of the several Courts, to regulate, as far as in them lies, a Profession of so great Consequence to the Public, in the best Manner it is capable of; so that it may be (as it ought to be) *respectable*, and that the Legislative Power should supply what they cannot effect?

Is the Stat. 4. *Hen. 4.* Ch. 18. *Eng.* for the Regulation of Attornies repealed? If not, is not the Power of the Judges by that Act, extremely extensive, as to the Admission and Regulation of Attornies, as also, as to their Qualifications, both in Regard to their Abilities, and Moral Character? And by this Act, have not the Judges a Power to restrain the Number of Attornies.

Is the Law Business of this Kingdom, sufficient to keep one half of the present Number of this Profession from starving? And are they not too often of the lowest Rank of the People, without a Six-pence to support them, on their setting out? what then must be the Consequence? 'Tis hard to starve.

And are not also, many admitted of this Profession who never read a Line of Law, nay, nor
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of any Kind of Literature, and has not this Profession visibly altered for the worse, since the Law Proceedings have been in *English*, and of all Professions in Society, is there one where superior Abilities, good Education, solid Judgment, great Activity, Perseverance, good Health, an almost inexhaustable Fund of Spirits, and other Advantages, (of which altogether, not one in twenty Thousand is possessed) are more requisite, than in that of an Attorney?

How then must an Attorney, little qualified as the generality of them are, prepare a State of his Client's Case, and especially where Matters of Law are in the Question? Is not one of the Tipstaffs, or Keepers of the Courts as well qualified? May not a Man entirely unskilled in Architecture; as well pretend to draw the Plan of a Palace; or a Person quite ignorant of the Mathematicks, pretend to frame a Problem, or a Proposition therein, unless he were inspired? And have not many Handicrafts-Men and Mechanicks, been lost to Society, by the folly, blindness and vanity of Parents, in placing to Professions, and endeavouring to make of their Children what Nature never meant them for?

Suppose Attornies were to be restrained from taking any Person as an Apprentice, but by the Approbation, and with the Leave of the Court, upon an Order to be conceived for that Purpose, on a Petition to be read in open Court, in which the Name and Age of the Person, his Parents, and their Situation, and Circumstances in Life, Profession,

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Suppose also, that some particular Time in every Year should be appointed for the Examination of Candidates, and it to be a publick, solemn and strict Examination, (one of the Judges, as also the Officers of that Court of which the Candidates sought to be Members, being always present) and each Person, before his Examination, to produce a Certificate from the Attorney he served, not only of his Service, but of his moral Character?

By a Stat. made in England in the 12th Year of His late Majesty's Reign, no Attorney there who is a Prisoner in any Goal is to commence or prosecute any Suit in his own Name or the Name of any other, any Action or Suit (except Suits commenced before his Confinement) and all the Proceedings in such Action or Suit, are made void and of no Effect, and such Attorney is to be struck out of the Roll, and incapacitated from acting as an Attorney; as also every Attorney permitting him to make use of his Name.

Would not this Act be of infinite Use in this Kingdom also, where many Grievances in this Way, have been committed by some of these confined Attornies, who, to gain a sorry Fee, or get a *gratis* Meal, make it their Business to spirit up all

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* I have in an Appendix hereto annexed, inserted the Form of an Order which I drew up and submitted to the Judges for the Regulation of this Profession, upon a Petition signed by many eminent Attornies, to their great Honour; which Petition is recorded in the Court of Exchequer, but not any Thing has been as yet done in Consequence thereof.

the beggarly Prisoners in the Goals with them, on whom they can prevail, to perplex and harraß others, and put them to immense Expence at Law, for old, trifling, or groundless Claims, and Demands, until they make them Partakers of their Wretchedness, by bringing them to the same horrid Places of Torment?

From the several Considerations I have here mentioned, I have been often surprized, that considering the prodigious Number of the Members of this Profession the Meaness of Birth, and Education, the Poverty of the greater Part of them, the various Temptations which daily fall in their Way, and withal, *that they are Men*, that there are not more bad ones than are heard of; however, the Profession loudly calls for Regulation, as the Mischiefs which the wicked Members of it, (though their Number were ever so few can do, may, for the several Reasons aforesaid, be excessively fatal?

And as no Member of Society earns Money harder, than an Attorney does, or deserves it better when he is skilful and honest; and in truth, there are several very worthy Gentlemen of the Profession; ought he not to be on the same Footing with others, in the Recovering of the Hire of his Labour, and not to be put under the many Difficulties he now lies under by the Stat. 7. Geo. 2. Ch. 14. *

If the Fees of the several Offices of the Courts of Law and Equity were settled and established by the
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* I have also in the said Appendix inserted the Draft of Heads of a Bill relating to their Bills of Cost, submitted to the Consideration of the Legislature.

the Legislature, and certain Hours appointed and fixed for the Attendance of the several Officers, at their several and respective Offices as are for the Register of Deeds, but distinguishing between the Terms and the Vacations, would it not be a most useful and beneficial Work and a great Satisfaction, not only to the Suitors of the Courts but to all Attornies, * and others who transact their Business for them?

Are not the Depositions taken on the Examination of Witnesses in Courts of Equity in many Cases, the chief Foundation on which the Courts are to form their Judgments? Ought not then all the Care that is possible, be taken in the properly and fairly conducting of this Business and in preserving these Depositions when taken in safe and publick Repositories, instead of being kept by these Examiners, in their own private Habitations,

* A SOLILOQUY.

Who that has Wits, would an Attorney be?
The Scorn of C—f—l, Of—c—r, and J—ge,
Neglect of Client, yea, th' Abuse of all,
Whom most he serves; a Wretch, for ever doom'd,
To drudge and slave for a poor sorry Pittance,
Which grudgingly, and of Necessity he gets.
If he succeeds, perhaps ne'er thought of more,
But if the Lot be adverse, woe betide him;
For tho' he can't, a wicked Cause make good,
And is but a meer Tool, to work the Plan
By others form'd, yet he has all the Blame,
And Rogue and Villain on each Side is dubb'd.
This is the State of that ill treated Calling,
Whose Labours cease not, even with the Day.

A proper Attorney.
Learned, Active, Honest, Grave;
The reverle,
Empty, Self-Sufficient, Knave.

tions, (as is the Case in the Exchequer) by which they have been frequently lost, and great Distress produced thereby?

Did not the Judges themselves formerly examine the Witnesses in Courts of Equity according to the antient Practice of the Civil Law? And altho' from the Increase and Multiplicity of Suits this cannot now be done, yet should not their Delegates or Substitutes in this most important Office, be Persons of the greatest Credit and Capacity?

May not a skilful Agent with two friendly Commissioners, (as this most essential Business is transacted) with the Help of such Evidence as is seldom wanting, if sought for, make an extream bad Cause appear in quite a different Light from what it really is?

Suppose then, that half a dozen Gentlemen of sufficient Property, who have been bred to Business, and of undoubted and approved good Characters in each County in the Kingdom were to be appointed by the two Courts of Equity, here as their Examiners, as also to take Answers to Bills in six of the principal Towns of the County, one in each, at proper Distances, with suitable Allowances from the Suitors, (not to be exceeded) for their Trouble?

If an Oath be (as it is generally understood) an Affirmation or Negation corroborated by the Attestation of the divine Being, is it not immaterial *as to the Oath itself*, on what Book it is taken, or whether it be taken on any Book at all? Or can the difference of a Book or not using a Book

Book take in the least from the Obligation or Effect of the Oath? And does not the taking of Oaths upon the Holy Evangelists respect the temporal Punishment chiefly, as it is necessary to prove that the Oath was so taken, in Order to convict of Perjury?

And as this is a Matter of such high Importance to Society, would it not be better if, in all Matters of Consequence, the Judges or Magistrates always themselves administered Oaths, and in that solemn awful Manner which the calling on the great God as a Witness, requires and demands, instead of trusting this essential Business to inferiour Persons, who too often, without the least Regard or Attention, and ignorant of the Consequences, gabble them over, as Words of Form and Course? And is it not, in a great Means, owing to this, that Oaths of Office, which are of so much Consequence to the Publick, are made a perfect Farce of? And are not many of the greatest Mischiefs in Society owing to this?

If the Rules and Practice of the three Law-Courts, and also the Rules and Practice of the two Courts of Equity, were to be carefully examined, and properly settled, by the Judges, on a Meeting for that Purpose, and made to correspond and agree in all Matters where it could conveniently be done, and afterwards not be varied in any Respect, unless upon a like Consideration of the Judges, would it not be of great Advantage to Suitors, and to the Honour of the Courts?

And if the like was to be done as to the *general Proceedings* on the several Circuits of the Kingdom, would it not be productive of great Ease and Satisfaction

tisfaction to the Grand-Juries and others who attend them, and much for the Advantage of the Kingdom?

Should not care be taken to prevent the shameful Combination which is too often carried on between Prosecutors and Criminals, by which the publick Justice of the Kingdom is most shamefully eluded and baffled?

It is thus, the Prosecutor appears at the first Assizes, the Criminal makes Default, wherefore, the Recognizance of the first is at End, and that of the Offender is estreated; then the next Assizes the Offender appears, and upon the Non-appearance of the Prosecutor, (of which he was very sure) is acquitted; he then gets a Certificate of his Acquittal, applies to the Court of Reducements, and thereupon the Estreat is reduced, generally to a Six-pence. Suppose, that in this Case it was required, that it should be made appear to the Court, that the Person or Persons bound over to appear and prosecute, had been examined on the Trial?

Does it not often happen in a State that the best and wisest Institutions are frustrated, and rendered absolutely nugatory, by the Neglect of some subordinate Spring which in the grand Machine seemed scarcely worth attending to?

Are there not more Robberies, Rapes, Murders, and Outrages of every Kind committed in this Kingdom, by many Degrees, than in any other civilized Nation in *Europe*? And do not our daily Papers confirm it?

If

If Justices of the Peace, throughout the Kingdom, were more careful than they are at present in requiring sufficient Sureties, Men of some Degree of Credit and Substance, and of known Residence, for the Appearance of Offenders, in all Cases of dangerous Assaults and violent Outrages, against the Peace and safety of Society, and would insert their Additions and Places of Abode in the Recognizances, instead of receiving (as it is too often the Case) any Persons that are offered, some of them perhaps fictitious; would it not be a great Means of preventing the Continuation of these Evils? And is not their Neglect in this, making publick Justice a meer Farce, besides putting the Crown and the Publick to an immense, yearly, useless Expence? *

Are there not several Places in and about this City, where not any Number of Bailiffs dare go to execute the Process of Justice? And is not this a Scandal to Justice, to Magistracy, and the Laws of the Land? And can there be the least Security of Life or Property, whilst such Things are suffered to be?

D

Are

* These Recognizances are, when forfeited, estreated into the *Exchequer*, and from thence are issued in Process, twice a Year, to the Sheriffs of the several Counties and Counties of Towns and Cities in the Kingdom, called the Process of the *Green-Wax*, for the Profits of which they are to account in the *Exchequer*; now, it is well known, that Sheriffs do frequently upon their Accounts return on, perhaps, 500 Persons in the Process, that not one of them hath either Body-Goods or Lands in his County. It is said, that Sub-Sheriffs make largely by these Returns, but it would be hard to think that Men can be so abandoned, for they are upon their Oaths.

Are not many of these Evils greatly owing to the under Officers of Justice and of Magistracy in this Kingdom being under no Degree of Regulation or Credit, nay, rather, held contemptible? And where now lies the Fault of this? Is it not in the superior Powers, who appoint, or neglect, or decline to support them?

If none but Men of Substance and Repute were to exercise these Offices, would it not soon restore them to Credit, and until this shall be done what signify a thousand Laws? Are they not but meer *Bruta fulmina et vana*?

Quid Tristes Querimonix
Si non Supplicio Culpa reciditur?
Quid Leges sine moribus
Vanæ proficient?

Hor. Lib. 3. Od. 24.

But wherefore do we thus complain,
If Justice wear her awful Sword in vain?
And what are Laws unless obey'd
By the same moral Virtues they were made?
Francis.

Altho' it is fit, that the Judges should have all the Respect paid to them, that their high and weighty Station demands, as also all the Power that may be necessary for that Station, and to enforce that Respect, where it should be wantonly, obstinately, or perversely with-held, or denied, yet is not the Power they have of fining Persons, *untried by a jury*, and *ad libitum* (which Fine when estreated, is an Execution) a most extensive Power? And
if

if it should ever happen that Judges should not be as good, or as patient and wise, as Judges ought to be, may not they abuse this Power to the Destruction of that Liberty, which we of these Kingdoms boast to enjoy, above all other People on the Globe? And especially if it be true (as has been urged) that to plead to the Estreat is not the Right of the Subject; or that the Court may refuse to admit a Plea to it, or at least, that they have a Right to approve of it? And what might our Case be in this Respect, if we had not a Parliament? *

D 2

Is

* Their Sallaries are abundantly too small, they are but little more than they were fifty Years ago, altho' since that Time the Expence and Price of almost all the common Necessaries of Life have been near trebled; so that our Judges have little or no Profit from their Sallaries, they being scarcely sufficient to support that State and Appearance, which this high and weighty Office requires. The Case is the same with many of the other Offices in the State, which is by no Means prudent, nor is it reasonable; for, as the Trade and Commerce of a Kingdom encrease, so do its revenues, and of course, in Proportion, the Business and Trouble of Offices; and I believe it will be allowed me, that narrow Circumstances have been, too often, a very powerful Incitement to Corruption and Fraud.

At the same Time it is to be wished, they did not receive Fees for any Business they do; it has such an Appearance as is really offending, and especially to see them changing Money on the Bench for Affidavits, &c. with the lowest of the People, by which their Attention is diverted, when perhaps some Matter of great Consequence is at the same Instant debating before them. If the Solemnity with which an Oath ought always to be administered, was adhered to as strictly as it ought to be, there would be good Reason why the Judges ever should administer them; but, surely the Officers of the Court could do the Business to the full as well, as any Clerk, or Servant, whatsoever.

In

Is not the Office of Sheriff, an Office of as high Consequence as any which our Constitution has? Do they not return Juries, to try our Lives and Properties? If in this they are corrupt, would not this most valuable Blessing, this one main Pillar of our Liberties be just as if we had it not?—Is it not by this Officer that our Laws are to be finally executed? And if in this they are corrupt, or if they should be Men of little Property and Credit, would our Laws be then any other, or more, than a meer dead Letter, to the entire Destruction of all Credit, Trust, and Commerce? But above all, do they not return the Members of the Legislature? If then it should ever happen, that they should only be chosen for the Purposes of Party Faction or

In short, the Salary of a Judge should be such, as to be a sufficient Recompence to the most eminent Lawyer to quit the Bar for it, for in truth, none other should ever be appointed to this Office. But alas! Hath it not too frequently happened, that Offices have been sought out for Men, not Men for Offices? But have they not been sold, and that avowedly? How seldom is any Regard had to the Endowments, Abilities, and Fitness of the Man? And yet, on this last, do not the good Government, Ease and Happiness of every Society, and of every Individual in Society entirely depend? It is sayed, that it was the constant Question of a certain Minister, who is long since rotten in his Grave, on Application for Offices, *what Service can he do the Party?*

We read of an Emperor who had his Horse declared Consul in full Senate, in Derision of the Choices they had made to this Office. *Antisthenes* desired the *Athenians*, upon a certain Time, to decree, that thereafter Asses should be called Horses; but some present replied in Banter, that cannot be: But Gentlemen (sayed he) you can chose for your Generals, Men who know nothing of Warlike Affairs, and whose Qualifications consist only, in having a greater Number of Voices.

or Power, would there not be an End of our Laws, and our Constitution, and to all Security of Liberty, of Property, of Life?

If these Things be so, and that all these Mischiefs might happen, either from a System of Corruption, or from false Politicks; ought not therefore every Power, Capacity, and Ability, be exerted without a Moment's loss of Time, to guard against such formidable Evils? And would not the proper Regulation of this high and most important Office, contribute to effect this greatly wished for End?

And ought not the Business of this Office be rendered as easy, and as free from Hazard as the Nature of it will admit of, in order to induce Gentlemen of Credit and Fortune to undertake it? And is it not the Process, called the second *Process of the Pipe*, a most unnecessary Process, for is not *Magna Charta* answered in the first Process, or *Summons of the Green-Wax*? And should not the *long Writ* issue immediately after the said Process? And would it not prevent a great Delay and save a very needless Expence to the Crown and the Public?

And since, by our Laws here, unmerciful Creditors can confine in public Goals, their insolvent Debtors, and render them for ever useless to Society, do not Charity and common Humanity direct that the Loss of Liberty should be made as easy, and as tolerable to these *immured* poor Wretches, as the Nature of the Case will admit of, and to keep them free as possible from the Oppression and Exactions of their too often
relentless

relentless Keepers? And would not publick Enquiry into the present Situations, States and Conditions of the several Goals and Prisons in this Kingdom, but especially in this great Metropolis, be most laudable? It is loudly called for, not only in regard to the Persons who now are, or may hereafter be confined therein, but to Society in general, as Numbers, Closeness, Dirtiness and Heat are most likely to produce Infections, which are seldom confined to a Spot.

On all Questions of Land, devised by Will, as the Law now stands, the Original Will must be produced to the Court; now, as this must of course be attended with great Hazard, and it may be with irreparable Loss, would it not be prudent, and most proper, if in the first Act which shall pass for the Amendment of the Law, a Clause be introduced to make an attested Copy of such Will properly vouched sufficient Evidence?

Suppose also, that a publick Office were to be established for the depositing of all Title Deeds and other Deeds of Consequence, and for making the Copies thereof, under proper Regulations, sufficient Evidence in all Cases where it may be necessary that they should be produced? Would not this prevent the great Confusion, and the many Inconveniencies which attend the Loss of Deeds, which is most likely often to happen, from the frequent Necessity there is of pledging them, and especially where Estates are sold in Parcels to different Purchasers.

Do not great Difficulties frequently arise in the Construction of *Uses* and *Trusts*, as also of the *Powers* and

and *Provisoes* in *Marriage-Settlements*? Is there any Thing more uncertain than, when, an *Use* is executed by the *Statute* of *Uses*. And in Proportion to this Uncertainty, must not the Security be in the Alienation of Property, the Jointures of Widows, and the Provisions for Children? Should not therefore all these Powers, for the Peace of Families, and for the Credit of the Law, be so explicitly and clearly penned, as to answer fully the Intention of the Parties and to be free of every Doubt and Difficulty? And if the Aid of the Legislature, should be thought wanting, should it not be immediately given to a Matter of such publick Utility?

Ought

By the *Use* not being executed, there may not be a proper Tenant to the *Præcipe* in a Recovery, and of Course the Estate-Tail not docked, all which may not appear until after a Number of Years, and many Family Settlements made: And of this, I have myself seen a recent Instance in a Family in this Kingdom, on a Recovery, suffered near one hundred Years before, and several Recoveries since, all under the Inspection and Advice of the ablest Lawyers that were in this Kingdom, in the Times they were transacted.

I have also in my Course of Business, met with several Cases, where from the ambiguous, dark and uncertain Manner in which the Powers in Marriage Settlements have been penned, it has puzzled some of the most eminent Lawyers in the Kingdom, to say, whether a Daughter is, or is not intitled to her Portion on her Marriage, or at what Time she is intitled; or if it can be raised during the Life of her Father; or how it is to be raised, or how, or in what Manner, or by what Conveyance, a Sum of Money is to be raised, which a Tenant for Life was, by the Original-Agreement, to have a Power to raise. And if it should become necessary to to apply a Court of Equity, for any of these Purposes, there are so many Parties to be made, and the Expence of Law-Suits so prodigious,

· Ought not all Laws, the Breach of which, are attended with any Penalties, Forfeitures, or Punishments, be publiickly read, at least twice a Year, at the Assizes Town of every County in the Kingdom?

And ought not every such Act to affect every Member or Individual of the Society equally? And does the Act against clandestine Marriages do so? Is not the poor Woman undone by the Marriage Being dissolved, and is the Man any Way injured? But suppose she has Children?

Does it not tend to the lessening the Number of People, and the promoting of Fornication and Adultery? And is it not therefore a mischievous Law to Society?

Ought not every Law only to regard Society in general? Is not a young Heir's marrying as he likes, and getting a Dozen Children, of ten Times

prodigious, that, unless the Demand be somewhat considerable, it were better never to attempt the getting it.

These Family Settlements, by which, in these Kingdoms, the first born Son shall have the Estate, arose from a Part of the Policy of the Feudal Law, long since abolished, and have been the Bane of many of them, suppose, the Father were to reserve a Power to give the Estate to, which ever of his Sons he should think most worthy? Would it not be a Means of promoting Emulation, and of quickly producing that Honour, Love and Duty, which Children owe to their Parents, and which these Family Settlements have too often prevented — That there might happen to be some Instances of Partiality, can be no just Argument against a general good.

Times more real Benefit to Society, than his marrying against their Consent, is of Loss?

Do not useless Laws debilitate such as are necessary? So, do not those which may be easily eluded weaken the Legislation? Ought not every Law to have it's Effect, and no one to be suffered to deviate from it by a particular Convention? See *Montisquieu's Spirit of the Laws*. Vol. 2. Page 302.

And to conclude, If any of the Grievances, or Defects I have here mentioned, are worthy of being considered by the Legislature which the Judges of the several Courts cannot themselves redress or remedy, sure, there never was a Time when it might have been more hoped for, than the present, when, there are almost double the Number of the Gentlemen of the long Robe, in the House of Commons, than ever was known to be, at any one Time before, several of whom, are of most distinguished Eminence in their Profession; and it is not to be doubted but they will shew as great Integrity of Heart and be the *Instruments* of compleating this so long and so much wished for Work, and it will be a Monument of eternal Honour to them, and to the Profession in general. A Profession, which when properly employed, and according to its original Intention, is both useful and honourable; when perverted, dangerous. Their being used to Argumentation and speaking in publick must ever give them great Advantages, and especially, if they are Masters of the Subject on which they are to debate.

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Wherefore

Wherefore, they ought to make themselves thoroughly well acquainted with the Constitution of their Country, and the Principles on which it is founded, which many of the Profession of the Law are very far from knowing, though they are great Masters of the *Business-Part* of the Profession. They should also understand (as well as they can) the Trade and Commerce of this Nation, and it's Revenues in every Branch of them; and previously to study every Question well, on which they are to speak; they may then be enabled to express themselves with Sense and Perspicuity, and be of real Use; whereas otherwise, though from a constant Practice they may have acquired a Knack of Speaking, may make a Parade, and tickle the Ears of the unskilful, or the violent, yet it will be but meer Talking, really, barbarous, and as Hamlet says in his Advice to the Players "It cannot but make the judicious grieve".

Let them also avoid the declamatory Style, and long Speechings, they must be excellent to be endured, and trust me, not one in ten Thousand have the proper Talents for this Species of Eloquence; they are a Fraud upon Time, and there is great Mischief in them, as they prevent Business; therefore, here, if ever, the usual Interruptions of the Nose and Lungs may be somewhat justifiable. A truly sensible Man will never be so desirous to say a great deal, as to speak to the Purpose.

But above all Things, let them beware of entering into Faction, Party, or Cabal; for if ever they appear in any of these, the simple, unadorned Discourse of an honest Country Gentleman would,

would, (at least, I am sure it ought) be a Weight to bear down Numbers of them: A few Words from an honest Heart has wondrous Effects; no Chicanery, Sophistry, or false Arguments, though adorned with all the Tropes and Figures of Rhetorick, or Flowers of Oratory, can ever stand against them; the World will not suffer it. And, now I am upon the Subject, if these same Country Gentlemen would but give themselves up a little more to the Knowledge of the Matters I have ventured here to recommend to the Gentlemen of the Bar, the Kingdom would soon find the Benefit of it; a few Hours less sitting after Dinner, would furnish ample Time for it; for as for Inspiration, they may rest assured that it has left the World many Centuries ago, and when it was in being, it was a boon that Heaven bestowed but on very few. This is the only Country, now in Europe, where this most unjustifiable Custom of thus wasting whole Evenings, is not abolished. But what is still worse, it has descended here, even to the Mechanick, to the manifest prejudice of every Business and Trade, and the impoverishing of whole Families. Hospitality, * when it proceeds from the true Principle, and is properly conducted, is extremely laudable, and must

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ever

* Cox, in the *Aparatus of Ireland* says, that this Sort of Hospitality (for which this Country, has ever been, above all others, so famous) originally arose from the Custom of *Tanistry*, which was a barbarous Custom among the ancient *Irish*, which (like *Alexander's Will*) gave the Inheritance to the strongest. His Words, are these, " And it was the Custom of *Tanistry* which made the *Irish* to be popular; " and to that End were popular even to Profuseness; and " above all Things coveted *outward Appearance*, thereby " to attract the Admiration of the Vulgar, and encrease " the Number of their Followers and Abettors,

ever be esteemed and valued: But when Vanity, or the love of Company, are the only Springs of it, or when it is but a meer Barter or Exchange of Feast for Feast, or Dinner for Dinner, the World soon see it, no Thanks are given, nor does it merit any.

But to Mind, tho, I am Native here,
And to the Manner born, it is a Custom,
More honour'd in the Breach, than the Ob-
servance.

Shakespear's Hamlet.

So Gentlemen, I shall conclude from the same Author, in the same Play, in the latter Part of that heavenly Piece of Advice which the old *Polonius* gives his Son *Laertis*, " Farewell, my Blessing, sing season this to thee ",

N. B. The Matter of these Queries may be seen much more at large, in the Preface to Mr. *Howard's* Treatises of the LAW and EQUITY Side of the EXCHEQUER.



APPENDIX.

A P P E N D I X.

*The Petition preferred by the
Attornies of the EXCHEQUER,*

To the Right Honourable the *Chan-
cellor, Treasurer, Lord Chief Ba-
ron,* and the rest of the *Barons* of
His Majesty's Court of *Exchequer*
in *Ireland*.

The PETITION of several Gentle-
men, Attornies of the said Court,

Humbly sheweth,

THAT it has been the Practice, for several
Years past, for several of the low Part of the
Profession in the said Court, (some of them confi-
ned in Goals for Debt) to take Apprentices from
among the meanest of the People, without the least
Degree of Education, for some very small, or per-
haps, no Consideration.

That by these Means, several Persons of most
infamous Characters, and by no Means qualified,
have

have been admitted Attornies of the said Court, to the Dishonour of the Court, the Discredit of the Profession, but above all, to the great Mischief of the Suitors therein, and to the Publick in general.

That your Lordships have full Power to remedy these Mischiefs (it is humbly apprehended and submitted) most fully appears by the Statute 4 Hen. 4. ch. 18. an Abstract of which is hereunto annexed.

May it therefore please your Lordships to take the Premises into your Consideration, and to make such Order, to prevent such Evils for the future, as to your Lordships shall seem meet,

And your Petitioners will pray.

The ORDER proposed.

ORDERED, That no Person, hereafter to be apprenticed to an Attorney of this Court, shall be admitted as an Attorney thereof, unless he shall before the Execution of his Indentures, have obtained the Approbation of the Chancellor, Treasurer, Lord Chief, or one of the other Barons, in Writing, signed by the said Chancellor, Treasurer, Lord Chief Baron, or other Baron, to be filed in the proper Office of this Court, at the Time of registering his Indentures, and that an attested Copy thereof be produced at the Time of his being sworn an Attorney.

This

This Petition was moved on, and the Order applied for, by a most eminent Lawyer, but the Court took Time to consider of the Matter; and some were of Opinion, that as the above-mentioned Act had been so long unused, it therefore might not be so proper, to proceed upon at this Day: But all agreed, that this Matter was most worthy of the Consideration of the Legislature.

Another Matter was at the same Time mentioned, which is often attended with great Inconveniences, and Mischiefs; which is, the Attornies of one Court suffering the Attornies of another, or Solicitors, to make Use of their Names. And pray, should Attornies, who live in the Country, and do not regularly attend the Terms, be permitted to act by their Clerks? And should not the Roll of Attornies be called over, in Court, on the first Day of every Term, and every Attorney, who should then be absent, be struck out of the Roll, or at least suspended, unless within four Days after their Default, a sufficient Reason should be given for their Absence?

By Stat. 4. *Hen. 4.* Ch. 18. *Eng.* All Attornies shall be examined by the Justices, and by their Directions put into the Roll, and those that are by them approved, shall swear, truly serve in their Offices, and to make no suit in a foreign County: And the other Attornies shall be put out by the like Discretion of the Justices, and their Masters shall have Notice thereof, lest they be prejudiced thereby.—— And as any die, or cease, the Justices shall appoint others, being *virtuous, learned,* and sworn as aforesaid.——And
if

if any Attorney be found notoriously in Fault, he shall forswear the Court, and be never admitted into any other Court. ——— The Treasurer and Barons of the *Exchequer*, shall pursue the like Course there, at their Discretion.

If it shall ever happen, that publick Offices shall be erected in one Place and together, should they not be built in such a Manner as to be safe from all Accidents of Fire, as Skill and Human Prudence can devise? To be vaulted every Floor, and as little Wood in them as possible; to be so near the River as that there may be at all Times a sufficient Supply of Water in Case of Accidents; to be as much detached from, and as clear of other Buildings as possible, and not to be above one Story high above the first Floor; also, the Walls to be built, or at least lined, with well burnt Bricks, made of Inland Clay, and that Inland Sand be used with the Lime, for if either the Clay or the Sand should be taken from the Sea, every Letter of any Writing deposited there would be quickly discharged.

I had near omitted another Matter which seems extremely worthy of the Consideration of the Legislature; it is in Regard to the unequal Distribution of Personal Assets (in Cases where *Testators* or *Intestates* do not leave Assets sufficient to pay their Debts) either by Executors or Administrators, retaining out of such Assets, Debts owing to themselves, or confessing Judgments to give a Preference to particular Creditors, by Means whereof, the the whole Assets have been swallowed up by such Creditors, and all the rest of the Creditors in
equal

equal Degree, deprived of the Debts most justly due to them.

Is not the Power which the six Clerks and Attornies have in the Court of *Equity*, of issuing Attachments, and in the first Instance, arresting a Defendant for want of an Appearance, or for want of an Answer (either of which may be, and generally is, owing to the Neglect of the Attorney, or Agent concerned for him, or perhaps the Non-Attendance or Absence of some of the Officers of the Court) too often attended with great Inconvenience and Mischief? It is a Power too great to trust in the Hands of such subordinate Officers, and has been sometimes much abused: May not the Credit of a Man be for ever ruined by it; and can it answer any End to do it in this early Way, but to put Money into the Pockets of Officers, or to gratify a cruel, or an ill designing Plaintiff? — it also loudly calls for Regulation, nay, for Restraint.

There is not any Nation upon Earth, where Law Suits are so tedious, and so expensive, as in this poor Kingdom (as yet but in the Infancy of it's thriving) let the Right be as unquestionable as it may. In *England*, Suits are generally determined in quarter the Time they are here, and at one quarter of the Expence; but there are Counsel there confined, or who confine themselves to particular Courts, and it is a rare Thing to see more than three Counsel on a Side, except it be in very extraordinary Cases; in common ordinary Cases, seldom more than two. And the Courts there are not pleased at seeing many Counsel on a Side, and will shew it, after they have heard a sufficient Number by saying, they are already possessed

of the Cause, and will desire, that nothing more that is not new, may be added.

But it would by no Means answer, to have them here confined to Courts; the *Exchequer* there, is chiefly conversant about the King's Revenue only and the Business which arises thereon; here it shares the *Equity* Business of the Kingdom, with the Court of *Chancery*, which almost makes it absolutely necessary for the Suitors (if the Cause be of Consequence) to employ a Number of Counsel; for if they were to employ but two, or three, they may when a Cause is on in one Court, be engaged in another: Then, as every one of them must speak to the Cause, and as they are often not in the Way, to hear what others have say'd before them, the Repetitions are frequently extremely tiresome and disgusting: And this often is the Case, even upon Motions, where Notice is necessary, how frivolous soever the Matter may be; so that should the Cause be of Consequence, only a Treasury could support it; or such a Purse, as *Fortunatus*, in the old Romance, is say'd to have been gifted with.

And, what is still worse, often upon these Motions, the whole Merits of the Cause, nay, sometimes the Substance of all the Pleadings are set forth in voluminous Affidavits, and stated by the Counsel, though in no Sort essential to the Motion; which too frequently produces Wrangles for Hours, whether the Merits are, or are not to be gone into; so that the Time of the Court, perhaps for a whole Term, shall be taken up with these, without hearing, it may be, one Cause of any Consequence, to the manifest Ruin of the Suitors. By
ex-

examining the Books of Hearings and Notes for twenty Years past, this grievous Mischief will appear most evident. Why should not such an Affidavit be referred for Prolixity and Impertinance, and if reported so, the Attorney who drew it to pay all the Cost, out of his own Pocket? As he should, in all Cases, where he puts his Client to unnecessary Expence, either from a contentious Spirit, Mistake, or Neglect. A few Examples of this Kind would quickly remedy much of the Mischief I am complaining of; and it would also help greatly towards it, if the Rules and Practice of the Court were in such a Manner established, so that it might be certainly known, what they really are: I have in the two Treatises I published, done all in my Power to promote that good and loudly called for Work, and should think all my Labour amply rewarded, were I to see the Success of it.

I am sure what I have here said, cannot offend any honest worthy Gentleman of the Profession of the Law, (and it is well known, there are several as much so in every Branch of it, as in any other Profession whatsoever) as to others, I am quite indifferent as to their Thoughts of the Matter. There cannot be a Man of any Humanity, or who has the least Regard to his own Posterity, but must heartily wish that these Evils were remedied.

*Suspicio ne si quis errabit Sua,
Et rapiet ad se, quod est Commune omnium;
Stulte nudabit Animi Conscientiam.*

PHÆDR.

The Grievance is, that in the general Odium which attends the Profession, the innocent are in some Measure involved with the guilty, and often treated with the greatest Rigour and Injustice.

HEADS of a BILL

FOR THE

Amendment of the LAW

AS IT

Now stands in the Proceedings by Attornies, in recovering their Bills of Cost, humbly submitted to the Consideration of the Legislature,

WHEREAS in Actions brought by Attornies or Solicitors, for Bills of Cost, the Evidence necessary to support the same on any Trial at Law, frequently takes up more of the Time of the Court, and the Jury than can be well spared, and the Officers of the respective Courts, where the Business mentioned in such Bills of Costs are transacted, are better qualified to determine concerning the Matters contained in such Bills of Cost than a Jury; for Remedy whereof, we pray it may be enacted, that where any Action shall be brought by any Attorney or Solicitor, his Executors or Administrators, in the Court of *King's-Bench*, the Court of *Common-Pleas*, or the Court of *Exchequer*, in this Kingdom, for or on Account of any Bill

Bill or Bills of Cost, served in such Manner, as in and by a certain Act of Parliament made in this Kingdom, in the 14th Year of His present Majesty's Reign, intituled among other Things, an Act for the better regulating the Payment of Fees of Attornies and Solicitors is required, and that the Defendant or Defendants in such Action, appear thereto, by his, her, or their Attorney, or Attornies, that it shall and may be lawful to and for such Attorney or Solicitor, his Executors, or Administrators, to have the Bill, or Bills of Cost, for which such Action shall be brought, taxed and settled by the proper Officer, or Officers, of the respective Courts, where the Business contained in such Bill or Bills of Costs hath been transacted, in Manner hereinafter mentioned, *to wit*, that the Plaintiff or Plaintiffs shall serve the Attorney or Attornies, so appearing for the Defendant or Defendants in such Action, with a Copy of such Bill of Costs, as hath been, or shall be served on the Defendant, pursuant to the said recited Act, and that within four Days after such Service, it shall and may be lawful, to and for the Plaintiff or Plaintiffs in such Action, to procure one or more Summons, or Summonses, directed to such Attorney so appearing for the Defendant or Defendants in such Action, from the proper Officer or Officers of the Court or Courts, where the Business mentioned in such Bill or Bills of Costs, so served as aforesaid, hath been, or shall be transacted, to attend the Taxation of such Bill or Bills of Costs; and that such Officer and Officers, shall upon Affidavit made, that such Summons or Summonses, was or were served, on such Attorney or Attornies, so appearing for such Defendant or Defendants, in such Manner, as is now used in the Taxation of Bills of Costs in other Cases, proceed to tax and settle

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the such Bill or Bills of Cost in his Presence; or if he shall refuse or neglect to attend such Taxation, that then such Officer or Officers, may proceed to tax the said Bill *Exparte*; and that all and every Bill and Bills of Costs, which shall be taxed, pursuant to this, or the said recited Act, shall upon any Trial, to be had in any Action, to be commenced or prosecuted by such Attorney or Solicitor, his Executors or Administrators, or upon any Writ of Enquiry of Damages to be sped, be held deemed and taken, as full and sufficient Evidence of the several Matters and Charges, contained in such Bill and Bills of Costs, respectively taxed as aforesaid.

Provided always, that nothing herein contained shall prevent or hinder the Person, or Persons, chargeable with such Bill or Bills of Costs as aforesaid, from giving in Evidence on such Trial, or on the Speeding of such Writ of Enquiry, the Payment of any Sum, or Sums of Money, or any other Satisfaction, made for, or towards the Discharge of such Bill or Bills of Costs.

And whereas, Attornies and Solicitors, by being obliged to serve Bills of Costs, in Manner prescribed by the said recited Act, before they are at Liberty to proceed at Law for the Recovery thereof, have lost, and are likely to lose several Sums of Money, by Persons withdrawing themselves and their Effects out of this Kingdom, for Remedy whereof, we pray it may be enacted, that where any Sum or Sums of Money is, or are, or shall be due, by any Bill or Bills of Costs, to any Attorney or Solicitor, his Executors or Administrators, and that it shall appear by Affidavit, to any of the Judges of the said Courts of *King's Bench*, or *Common-Pleas*, or to any of the Barons

Barons of the *Exchequer*, that such Sum or Sums of Money is or are due, and that the Person or Persons chargeable with such Bill or Bills of Costs, intend to withdraw him, her, or themselves out of this Kingdom, and that such Attorney or Solicitor, his Executors or Administrators, will thereby be in Danger of losing such Sum, or Sums of Money, that it shall and may be lawful to and for such Attorney, or Solicitor, his Executors or Administrators, by Leave of any of the said Judges or Barons first had or obtained, to issue such Process for the apprehending and taking such Person and Persons chargeable with such Bill or Bills of Costs, as he, she, or they, might have done, at any Time before the passing the said recited Act, and that in such Case, such Attorney or Solicitor, his Executors and Administrators, shall and may proceed for the Recovery of such Bill and Bills of Costs, in such Manner as he or they might have done, at any Time before the passing the said recited Act. Provided always that such Attorney or Solicitor, his Executors or Administrators, do and shall within two Days after the issuing of such Process, for the apprehending and taking such Person or Persons, chargeable with such Bill or Bills of Costs, lodge and depofite such Bill and Bills of Costs, and a true Copy thereof, with the proper Officer for taxing Bills of Costs in the Court from whence such Process shall issue, and that such Officer shall with all convenient Speed, at the Request of the Person or Persons chargeable therewith, deliver to him, her, or them, or any Person authorized by him, her, or them, without any Fee, Gratuity, or Reward, such Copy as aforesaid. And that such Officer, upon his receiving such Bill and Bills of Costs, and Copy, shall be intitled to receive as a Fee from the Person or Persons lodging

lodging the same, the Sum, of three Shillings and four-pence, as and for his Fee upon that Occasion. And that it shall and may be lawful to and for the Defendant or Defendants, against whom such Process shall issue, as aforesaid, to procure such Bill and Bills of Cost, (which shall be lodged with the Officer in Manner aforesaid) to be taxed in Manner herein before directed, and that such Taxation shall be conclusive, and such Defendant or Defendants, shall be discharged, upon Payment of the Sum so taxed.



FINIS.

